CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Appeal No. ST/03/2010

[Arising out of 11/LDH/09 dated 09.11.2011 passed by the Commissioner of Central Excise, Rishi Nagar, Ludhiana]

M/s Ludhiana Builders **: Appellant (s)**
SCO 24, Ludhiana Trade Towers, Feroze
Gandhi Market, Ludhiana, Punjab

Vs

C.C.E. S.T- Ludhiana **: Respondent (s)**
Central Excise House, F-Block Rishi Nagar
Ludhiana Punjab, 141001

APPEARANCE:
Shri Hari Om Arora, Advocate for the Appellant
Shri H. S. Brar, Authorised Representative for the Respondent

CORAM : HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE Mr. RAJU, MEMBER (TECHNICAL)

ORDER No. A/60881 / 2019

Date of Hearing:22.10.2019
Date of Decision:22.10.2019

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the demand has been confirmed on 'Construction of Residential Complex Services' for the period 16.06.2005 to 31.05.2007 and under the 'Site Formation Services' for the period from 16.06.2005 to 31.05.2007 alongwith interest and penalties.

2. The brief facts of the case are that the appellant is engaged in the activity of Construction of Residential Complexes alongwith material and also engaged in the Construction or repairs of roads and was not paying service tax, therefore, a show cause notice dated 12.05.2008 was issued to them for the period 16.06.2005 to 31.05.2007 and the demand was confirmed under category of
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'Construction of Residential Complexes' and 'Site Formation Services'. Against the said order, the appellant is before us.

3. The Ld. Counsel for the appellant submits that as they are constructing flats alongwith material, therefore, the merit classification of their services is under Works contract Service as held by the Hon'ble Apex Court in the case of ***CCE, Kerala vs. M/s Larson & Toubro Limited 2015-39-STR 913 (S.C)***.

4. With regard to Site Formation Service, it is his contention that the said site formation service is none other than the construction of road only in complexes where the any flats have been constructed, the same is merit classification under construction of roads and same is exempt from payment of service tax as per the Notification No. 17/2005-ST dated 07.06.2005, therefore, they are not liable to pay service tax.

5. On the other hand, the Ld. AR reiterated the findings of the impugned order.

6. Heard the parties and considered the submissions.

7. The demand of service tax has been confirmed against the demand under two heads:-

(a) Construction of Residential Complex Services

(b) Site Formation Services

(a) **Construction of Residential Complexes Services**:- We find that it is an admitted fact in the show cause notice that the appellant is constructing residential complexes alongwith material and the same is having merit classification under the category of 'Works Contract Service' as held by the Hon'ble Apex Court in the case of ***M/s Larson & Toubro Limited*** *(supra).* We find that it has been held that for the period prior to 01.06.2007 no demand can be raised under that category and thereafter the demand is to be confirmed under 'Works Contract Service'. Admittedly, the show cause notice does not proposed the levy of service tax under the 'Works Contract Service', therefore, we hold that the appellant is not liable to pay service tax under the category of 'Construction of Residential Complexes Services'. In these terms, we set-aside the demand of Rs. 29,15,465/-.

(b) **Site Formation Services:-** We have gone the records placed before us and as per the records, the appellant is constructing a road. As per the impugned order itself, the only reason to denial benefit was that the roads were not open to general public and thus not covered under public utility. We find that Notification No. 17/2005-ST dated 07.06.2005 does not say that if it is not a public road then it is liable to be taxed. Therefore, we hold that the appellant is engaged in the construction of road and the same is exempt as per the Notification No. 17/2005-St dated 07.06.2005, therefore, no service tax is payable by the appellant.

8. In view of the above discussion, we dropped the demand confirmed against the appellant and set-aside the impugned order.

9. In result, the appellant is allowed with consequential relief, if any.

(Operative part of the order pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

(RAJU)
Member (Technical)

G.Y.